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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,771	11/24/2003	Alan Rezach	4002-3317	4899

7590

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EXAMINER

AMARELD JR, ROBERT W

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 03/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/720,771	REZACH ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Robert W. Amareld, Jr.	3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 12-14, 17 and 39-43 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 34-38 is/are allowed.
- 6) ☒ Claim(s) 1-11, 15, 16 and 18-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/19/04, 7/02/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of group I and species A, claims 1-11, 15-16, 18-38 in the reply filed on 1/20/06 is acknowledged. The traversal is on the ground(s) that group I and II are within the same class/subclass of 606/60. This is not found persuasive because after further consideration it is found that the invention of Group II (a sterile packaged kit) belongs in class 206/363, which is not required in the search of group I because it contains the divergent subject matter of sterile packaging as a main component, not found in 606/60. The applicant also argues:

Regarding the species requirement, since the applicant failed to admit on the record, or provide any evidence that, the various embodiments are obvious variants, the examiner considers the species requirement proper.

The requirement is still deemed proper and is therefore made FINAL.

Claims 12-14, 17 & 39-44 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 1/20/06.

***Specification***

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Rod and Implant Connector Assembly.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-10, 15,16 & 25-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Amrein (US Pat# 6371957). Amrein discloses a receiver member (3) with a channel (6), at least one aperture (25) for a cylindrical closure member (20), where

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the embodiments of figures 13 and 14 (#s 72 & 75) show a transverse opening having a countersunk edge (80, 81). Amrein also disclose a grommet member (77) having a passage and at least two prongs, being compressible extensions, (marked with threads 27) extending transverse to the passage (54) where the prongs are inserted such that they are adjacent to the counter sunk opening, where the receiver and grommet are rotatably connected where upon assembly the fixing member (12) is lodged between the prongs via the internal threads (27). The extensions may include a flange (shown in figure 1 and 10) or grooves as threads (27). In the embodiment of figures 9 & 10, the body of the receiver member (3) comprises two disks (52 & 53). In reference to claims 7 and 8, the grommet holds the shank of a bone screw (2) and the applicant is reminded that claims 7 and 8 are merely additional functional limitations and carry no weight in the absence of distinguishing structure. The nut (26) is a retaining ring which is threaded and whose threads fit into the threads of the extensions, where the threads are also grooves and an elongate member (1) may extend through a channel (Figure 3).

Claims 1-3, 6, 9-11, 18 & 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Ramsey (US Pat# 4946122). Ramsey discloses a receiver member (38) having a channel and an aperture for a closure member (52), a grommet member (62) with the extension collar (62), being a prong and compressible and includes the boss(80) which is a flange for interaction with the receiver member and contains the groove (82). The retaining ring (78) is employed for use within the groove (82) where the receiver has the slot/ gap (44) a having an extension where the grommet extension

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is inserted into the gap as shown in Figure 3 by the dotted line, where the retaining ring (78) is one intermediate member between the receiver and grommet and the boss (80) will restrict the retaining ring movement in at least one direction and is substantially disk shaped and includes a groove on each side of the central extension as visible in Figure 3.

Claims 1, 18, 19 & 21-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Taylor (US Pat# 6579292). Taylor discloses a receiver member (12) a grommet member (22) with the extension (27) with threads (30) with two disk shaped intermediate members (41 and 40) each with a rough side containing splines (51 & 52) where Taylor discloses the used of silicone (Col. 7, lines 1-13)

The applied reference has a common Inventor (Harold Taylor) with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 27-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amrein (US Pat# 63719579) in view of Taylor (US Pat# 6579292), both of which are discussed supra. However, Amrein does not disclose intermediate disks containing splines. Taylor teaches splines on the intermediate members (Figure 2) in the same field of endeavor or the analogous art of connection assemblies for the purpose of connection of implants and rods. It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the teaching of splines, as taught by Taylor, to the disks as per Amrein, in order to provide a directional locking means. Furthermore, It is also possible that the device of Amrein (Figures 13 and 14) may be modified to include the intermediate disks as described by Taylor. It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the teaching of discs, as taught by Taylor, to the receiving member and grommet as per Amrein, in order to limit the rotation of the device.

#### ***Allowable Subject Matter***

Claims 34-38 are allowed.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Murray, US Pat# 4483334- external fixation; Engelhardt, US Pat# 2940783- clamping device; Ueyama, US Pat# 6832999 – rod connection; Huebner, US Pat# 5624440- bone fixator; LeVahn, US Pat# 4718151- retractor

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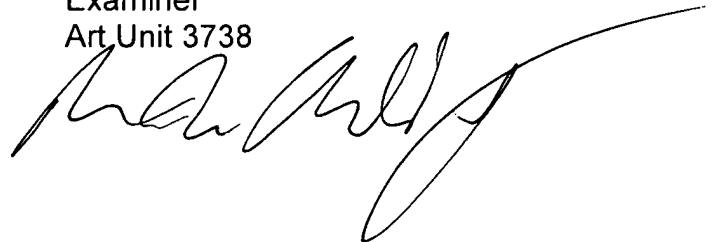
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert W. Amareld, Jr. whose telephone number is 571-272-6170. The examiner can normally be reached on M-F 9am -5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RWA

Robert W Amareld, Jr.  
Examiner  
Art Unit 3738



**BRIAN E. PELLEGRINO**  
**PRIMARY EXAMINER**

